IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2002

Coram :

THE HONOURABLE MR. JUSTICE P. SHANMUGAM

and

THE HONOURABLE MR. JUSTICE P. THANGAVEL

C.M.A. No.37 of 2001 and
C.M.P. Nos.3814 & 11991 of 2001

S.K. Megalai .. Appellant

vs.

R. Muthuraj .. Respondent

PRAYER :
Appeal against the order and Decreetal order dated 24.11.2000 of the learned Judge of the Family Court, Madurai made in H.M.O.P. No.71 of 1997.

: ORDER

This Appeal coming on for Orders on this day, upon perusing the Memorandum of Appeal, the order of the Lower Court, and the material papers in the case, and upon hearing the arguments of Mr. V. Sankaranarayanan for the appellant and of Mr. A. Natarajan for the respondent and having stood over for consideration till this day, the Court made the following Order :-

J U D G M E N T

P. SHANMUGAM, J.

The respondent/wife before the Family Court, Madurai is the appellant before us. The husband filed a petition H.M.O.P. No.71 of 1997 under Section 13(1) of the Hindu Marriage Act for a decree and judgment to dissolve the marriage between the parties held on 11.11.1991. The Family Court, by a judgment dated 24.11.2000, granted the decree and directed the dissolution of the marriage. The appeal is against this judgment and decree.

2. The appellant/wife was working as an Officer in the Indian Bank at

Chennai and the respondent/husband was working as Assistant Chief Controller of Imports and Exports in the Central Government Commerce Department at the time of marriage. The marriage was an arranged marriage held according to the Hindu religious rites and customs on 11.1 1.1991. Misunderstanding arose even at the time of reception of the marriage and both parties have their own versions about it. However, they started living together at Madurai, the wife having got transferred to Madurai. A female child was born to them in October, 1992. On the basis of a stated incident in the petition that the wife did not obey the direction of the husband to take the milk tumbler outside and the refusal and threatening by the wife on the alleged statements that she will give a police complaint, she is said to have left the matrimonial house at Madurai along with the child to her parents' house at Uthamapalayam. The petitioner went to Uthamapalayam to take the baby back with him, but the same was resisted to, resulting in the intervention of the police and ultimately, the child was restored to the wife. Thereafter, the problem between the parties was settled and compromised on 22.1.1995. The wife conceived for the second time and she was taken for the second delivery on 10.10.1996, after taking scanning and undergoing medical tests at Madurai. The second child was born on 22.11.1996. Contending that the husband was not informed of the birth of the second child and that his friends were not permitted to see the child and that the wife had refused to carry out the marital obligations of conjugal rights, a registered notice was issued by the husband through his advocate on 29.1.1997, followed by the petition under Section 13(1) of the Hindu Marriage Act on the ground of mental cruelty.

3. The wife opposed the petition, inter alia, contending that there is no cause of action for the petition and that the same was made because of the hatred of the husband's family towards the birth of two female children and with an intention to have a second marriage. According to the written statement, the husband is acting at the instance of his mother and that he had developed hatred towards the wife only because of the constant instigation by the mother-in-law. She further says that the mother-in-law had influenced and interfered even with the official conduct of the husband, resulting in criminal complaints against him. The minor differences were magnified and the allegations that she was not happy with the marriage and that she was having the habit of leaving to her parents' house without informing the husband and that the first child was named without informing him were all denied. On the contrary, she points out that it is her, who was at the receiving end because of her failure to bring sufficient dowry and for giving birth to a female child. In any event, after the admitted compromise on 22.1.1995, the husband has no cause of action to make any complaint against her whatsoever. She refused the allegation that the husband was not informed of the birth of the second child. On the contrary, it is her complaint that the husband's family came to know that the second child is going to be a female child after the scanning was done, over which they were very much upset and therefore, inspite of her informing them about the birth of the second child, they did not come and see the child. They have invented reasons to immediately give a registered notice on 22.1.1997 with false allegations to prepare a ground for a divorce. She had denied all the allegations made in the petition and has her own version and has put it that she is a person who had been wronged and that the mental and physical cruelty had been inflicted only on the wife by

the husband and not vice versa.

4. The parties have examined themselves, besides the lawyer's notice, an inland letter and a photo album being marked as exhibits on the side of the wife. The learned Family Court Judge had considered the materials and also the only issue whether the respondent had caused such cruelty to the petitioner to enable him to get a divorce and answered the same in favour of the husband.

5. The judgment of the Family Court has been assailed on several grounds. We have heard the counsel for the parties and considered the matter carefully.

6. On the factual aspects, shorn of all minute details, the major events that are admitted to have taken place are as follows :

11.11.1991 - Marriage between the parties.
October, 1992 - First female child was born.
April, 1993 - Termination of medical pregnancy to the wife.

November, 1994 - Husband leaves the house with the female child to Uthamapalayam and the wife's attempt to get back the child through mediators and complaint in the police station by the wife for assault and refusal to give the child.

22.1.1995 - The matter was compromised.

10.10.1996 - Wife leaves for second delivery after taking a scan and finding that the second child would be a female child.

22.11.1996 - Female child was born.

29.1.1997 - Registered Advocate's Notice by husband for judicial separation on the ground of failure to carry out marital obligations and cruelty.

7. In reference to the above events, we are concerned with the instances that are said to have taken place after the admitted compromise on 22.1.1995 and the parties started living together thereafter. Therefore, we are not seriously concerned with the events that had taken place earlier. However, for the sake of completion we find from the legal notice as well as the petition, the following instances of cruelty :

(1)The alleged statement of the wife that she did not like the husband.
(2)The alleged statement of the wife on the next day of marriage reception

that she would commit suicide and the husband giving a telegram to the wife's parents and asking them to take her back to advise her.
(3)Not revealing the monthly income and spending for the family and the habit of leaving the marital home whenever her parents come, without the permission of the husband.
(4)Naming the child without informing the husband.
(5)Creating an impression among the friends and relatives that the wife had given dowry.
(6)The refusal to remove the milk tumbler and threatening that she will give a police complaint and send the husband to jail.
(7)Giving police complaint to get back the baby on 18.11.1994.
(8)Settlement on 22.1.1995.

The incidents that happened after the settlement as set out in the notice and the petition are as follows :

(1)Attempt of the wife to go to her parents' house on weekly holidays.
(2)After leaving to her parents' house on 10.10.1996 for the second delivery, the failure to inform the husband about the birth of the child and the refusal to permit the friends of the husband to see the child.

8. The wife, in her counter as well as in her evidence, has stated that they were living happily after the marriage held on 11.11.1991. The marriage reception was held at Chennai on 19.11.1991. She had never informed the husband that she did not like him nor she threatened to commit suicide. On the contrary, she says that it is only her mother-in-law who gave a telegram to her parents alleging that their daughter is trying to commit suicide and her parents came there and finding the telegram to be false, took serious objection for the same, for which the mother-in-law replied that the dowry given by them was insufficient. After having married without specifying the dowry, the allegation of insufficient provisions was the reason for the controversy, and thereafter, they were living to gether at Madurai and a female child was born to them in October, 1992. The naming of the child was done by the husband's family at Tenkasi, the place of the family deity of the husband. However, it is the husband, who had left her parental home with the child on the flimsy allegation that she refused to remove the milk tumbler and only in her attempt to get back the tender child as also the physical beating given by the husband which prompted them to file a police complaint and only then they were able to get back the child. It is only the husband who has left the house with the child without informing the wife. According to her, right from the beginning, the mother-in-law was so unhappy on account of the birth of the female child and became very upset when the second child was also found out to be a female child. According to her, she had informed the husband immediately about the birth of the child and she had denied the alleged refusal to permit the husband's friends to see the child. It is not in dispute that the husband did not go to see the child. She has also stated in her evidence that immediately after the legal notice Ex.P.1 dated 29.1.1997, she contacted her husband over phone as to how he could issue such a notice. He had replied saying not to take the notice seriously and that he had issued it only as a joke. It is the husband who had asked her not to come to his house after the birth of the second child.

9. The allegations of cruelty prior to 22.1.1995, the date of the admitted compromises, are not established and in any event, the husband had admittedly condoned whatever that had happened prior to 22.1.199 5. Therefore, we are seriously concerned only with the alleged incidents that are said to have taken place after that. The parties were living together from January 1995 to 1996. The main grounds of cruelty, after this, is the failure of the wife to inform the birth of the child to the husband and permit his friends to see the child, which was followed by the legal notice dated 29.1.1997 stating that she had failed to discharge her marital obligations. In his legal notice, it is stated as follows :

"My client's friends settled the matter, made a compromise on 22.1.1 995. You came to the matrimonial home. Even after settlements, you often unco-operated with my client for no reason."

Till 10.10.1996, the date on which she left for her parental home for the second deliver after scanning, the only allegation in the notice is that it is only the husband who was looking after the child and that she used to go to her parents' house on weekly holidays. After the birth of the child, the wife did not bother to send a word to him about the delivery and his friends were also refused permission to see the new born child. On the contrary, the wife has stated in her counter that the birth of the second child was immediately informed to the husband and since the husband's mother had already developed a hatred towards female child, neither the husband nor anyone from his side choose to come and see the second child. Therefore, the fact remains that admittedly, the husband did not make any attempts to go and see the child even assuming that he came to know through somebody about the birth of the child.

10. Secondly, there is no question of refusal to perform the marital obligations on the part of the wife, between 22.11.1996 and 29.1.199 7, especially after the birth of the second child on 22.11.1996, since the husband had not gone to take the wife back and further, it is too short a period for the wife to leave the tender child. It is crystal clear that the allegations made after 22.1.1995 that she did not inform the birth of the child and the refusal to permit his friends to see the child, which are not denied, are too trivial so as to constitute mental cruelty for the husband. As a matter of fact, the admitted failure of the husband to go and meet the second child and his insistence upon the wife to come and perform the marital obligations within two months of the birth of the second child itself is only a cruelty against the wife and not against the husband.

11. The next main ground argued and objected to by the counsel for the respondent herein is as to the allegations contained in the statement of objections filed by the wife before the Family Court.

12. At the outset, it has to be stated that the respondent did not amend his petition alleging a new ground for divorce namely mental cruelty on the basis of the allegations contained in the statement of objections. In the counter, the wife had stated that she is inherently a disciplined, sophisticated and modest housewife, who had determined to dedicate herself as a duty-bound housewife to her husband. But on the other hand, the respondent

happened to be a "henpecked puppet" of his sadist mother and a greedy woman, who exploited the official status of her son and trained him to e xtend his hands beyond his reaches and invited criminal cases. She says as follows :

"The respondent (wife) was very much disturbed by the activities of the petitioner right from the threshold of her marital career. But, neither the petitioner nor his mother entertained the feelings of the respondent. The disagreeing attitude of the respondent towards the corrupt activities of the petitioner gradually developed a dent in their relationship."

In other words, the allegation of the wife was that the greediness of the mother-in-law is the root cause for the activities of her husband, both inside the house as well as in his official capacity. She had stated that the husband earned several lakhs of rupees out of the corrupt practice and purchased several properties and jewels in the names of his brothers, mother and relatives in Uthamapalayam. The respondent, in his deposition as P.W.1, has admitted that R.C. No.15 of 1992 was filed by the C.B.I. Madras before the Special Court, in which he was shown as the 10th accused. Thereafter, he was deleted from the chargesheet. He further admits that his net income during 1992-9 3 was Rs.6,000/- or Rs.7,000/- and one of his brothers Ravi was studying in a college during 1992-93. For the suggestion that during that period 1992-93 four properties were purchased in the name of his brother and his father, the respondent has stated that he is not aware of those purchases. The further suggestion that these properties were purchased and buildings constructed at the cost of Rs.15,00,000/- and that it was his property was denied. In this context, the wife has stated that the greediness of his mother had spoiled the mind of her husband to follow her dictates. Apart from this, she had apprehension even for the life and safety of her two female daughters. She had emphatically denied that neither the respondent nor anyone went to her house to see the female children when they were born and stated that she was denied entry to her marital house after delivery of the second child. Inspite of several attempts made on her part through her father, relatives and mediators to try to join the husband, the respondent has denied that right with an ulterior motive of satisfying his mother's commands.

13. Though some of the expressions used are caustic like "corrupt practice" and activity and that he acted like a "henpecked puppet of his saddist mother and greedy woman", the language by itself cannot be taken out of context and relied solely for the purpose of establishing mental cruelty on that score. The fact remains that a criminal case was registered wherein he was arrayed as the 10th accused and subsequently absolved of the charges and that the husband was admitted to have purchased properties in the name of his family members and was acting at the whims of his mother and that the disagreeing attitude of the wife to these activities is one of the grounds to refuse her the right to join her husband. Apart from that, she had alleged that the mother of the husband had developed serious hatred towards her because of the birth of the second daughter to the extent of weeping on knowing about the result of the scanning and the admitted failure of the respondent to come and see her and the issue of legal notice within three months of the birth of the second child on the ground that she had not provided conjugal rights to the husband would only go to show how far the wife

is driven and out of desparation, she has made the claim in the counter statement. Therefo re, we have taken into account the whole background and the context in which these expressions were used.

14. Reliance was was made by the counsel for the respondent to the judgment in V. BHAGAT VS. MRS. D. BHAGAT (A.I.R. 1994 S.C. 710). In our view, this judgment cannot be of any assistance to the respondent for the reason that their lordships have observed therein that the case is an unusual case calling for an unusual solution. They have also cautioned in paragraph 23 of the judgment by clarifying that merely because there are allegations and counter allegations, a decree of divorce cannot be granted. Their lordships observed as follows :

"If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

Referring to the marriage in that case, it was observed,

"It was one which has turned into a hole for sure. The allegations and counter allegations are indicative of the intense hatred and rancour between the parties. Any reconciliation is out of question. Each party, it appears, is out to punish the other for what other is supposed to have said or done. This appears to be the single thought ruling their lives today. A good part of the life of both the parties is consumed in this litigation and yet the end is not in sight. For the parties to come together, they must be superhumans, which they are not. The parties have crossed the point of no return long ago. The nature of allegations levelled against each other show the intense hatred and animosity of each bears towards the other. The marriage is over except in name. Both the parties are well settled and the chilren are grown up and are on their own. On these facts, the allegations were held not made in a fit of anger or under an emotional stress. They were made in a formal pleading and the questions to that effect were put by her counsel at her instance in the cross-examination. Even in her additional written statement, she had asserted her right. The wife has contribued lack of mental equilibrium of the husband and all members of his family are lunatics and streaks of insanity run through his entire family. The husband in that case was a practising lawyer. He began suspecting her infidelity and when questioned of her adulterous behaviour, she admitted the same and asked to be pardoned. This was denied to by the wife. According to the respondent, she is an incorrigible adulteress. The wife characterised the husband like Othello, a pathological, suspicious character."

Therefore, in our view, in the facts and circumstances of the said case, their lordships held that divorce can be granted in the peculiar facts and circumstances. None of these parameters set out in the said judgment apply to the facts of the case on hand. A Division Bench of the Bombay High Court in RAJEN VASANT REVANKAR VS. SHOBHA RAJAN REVANKAR (A.I.R. 1995 BOMBAY 246) held that wild, reckless and scandalous allegations by the wife against the husband's mother, his two married sisters and brother-in-laws in letters amount to cruelty. In this case, the wild and baseless allegations against all the family members were found repeated and the Division Bench, held that

attempts at reconciliation failing, the marriage irretrievably broke down and granted the decree for divorce. In both the above judgments, their lordships held that mental cruelty should be of such a nature that the parties cannot be reasonably expected to live together. The situation must be such that the wronged party cannot be reasonably asked to put up with such conduct and continue to live with the other party. Applying this ratio, we cannot hold that the husband has reasonable apprehension from his wife that he cannot be expected to live with her.

15. The judgment in V. BHAGAT VS. D. BHAGAT cited supra was referred to and explained in PUSHPAVATHI @ LALITHA VS. MANICKASAMY [I (2001) DMC 679 (SC)]. Their lordships in this case held that what is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made. The failure of the respondent in making it as a plea for a ground of divorce and to give an opportunity to explain the case of the wife also has to be taken into account. In R. BALASUBRAMANIAN VS. VIJAYALAKSHMI BALASUBRAMANIAN [1999 (7) S.C.C. 311], the Supreme Court held that the cruelty stood condoned by the parties living together and celebrating wedding anniversary. In this case, all the allegations prior to 22.1.1995 stood condoned by their subsequent cohabitation and getting a second child. After the birth of the second child, there is hardly any acceptable material to constitute cruelty. There is absolutely no cause of action to issue a legal notice dated 29.1.1997 and it is obviously intended to refer to the earlier incidents to prepare a ground of a petition for divorce. Therefore, there are no bonafides in the allegation of cruelty. In S. HANUMANTHA RAO VS. S. RAMANI [1999 (3) S.C.C. 620], the Supreme Court held that hypersensitivity and panic reaction of complainant/spouse cannot be used to case a blame on and make out a case of mental cruelty. In that case, a complaint before the Womens' Protection Cell was made by the wife against the husband and his family members, who in panic, sought anticipatory bail, in the absence of any record to show that any members of the family were harassed, and that only a plea was made to bring a reconciliation between the parties, the respondent cannot be blamed for that. In this case also, the police complaint is the result of the snatching away of the tender child by the husband without informing the wife and others and they were to go along with the family members and seek protection of the police to get the child. It was a conciliation by which the husband handed over the child to th wife. Therefore, the action of the wife to seek protection of police for getting back her child cannot be treated as amounting to cruelty against the husband. On the contrary, it is the other way around.

16. Lastly, a reference was made to one of the letters written by the wife ten years back to one of her friends. It is an undated letter without address and not posted. Admittedly, this letter came to be marked not through the respondent. The letter was simply shown to the wife and was marked. The admissiblity of this letter itself is in doubt. Apart from this, the letter was not posted and it is not intended to be seen by anybody. She writes therein that she is not interested to marry the man as he wants an Accountant, i.e. the appellant and he demands for one car and .... pounds of gold also.

She says, " Think of it, what kind of desparate life I am going to have". She prays the help of the God as she was upset at the proposal at that time. A reading of this letter would only show that she is not happy for the proposal because of the amounts demanded by the husband's family. Apart from this, we do not find anything u nusual so as to say that there she was having an affair with another person and that therefore, this has caused mental agony to the husband.

17. Section 10 of the Family Courts Act, 1984 says that subject to the other provisions of the said Act and the Rules, the provisions of the Code of Civil Procedure, 1908 shall apply to the suits and proceedings before the Family Court. Order 7, Rule 14 C.P.C. deals with the documents relied on in the plaint. Rule 14 mandates the production of the documents when the plant is presented and at the same time, deliver the documents or copy thereof to be filed with the plaint. Sub-rule (2) says that where he relies on any other document, whether in his possession or power or hand as evidence of his claim, he shall enter such document in a list to be added or annexed to the plaint. Rule 17 says that a document which ought to be produced in court when the plaint is presented and when it is produced, it shall not, without the leave of the court, be received as evidence on his behalf at the hearing of the suit. Sub-rule (2), which is relevant for our purpose states as follows :

"Nothing in this rule applies to documents produced for crossexamination of the defendant's witnesses, or in answer to any case set up by the defendant or handed over to a witness merely to refresh his memory."

18. In this case, the petitioner ought not have been permitted to mark a new document without the leave of the court while the respondent is being cross-examined, especially when there is such a plea in the petition. There is no scope for marking such a document through the respondent. The heading of Rule 18, which says, "Admissibility of document not produced with plaint filed", shows that the document said to have been produced is inadmissible in evidence. However, the learned Judge, in our view, erroneously went on to mark this document as Ex.P.3 and narrated the full text of the letter, holding that this letter clearly reveals that she had lots of love to one Mr. Jugal Kishore Hasmukh who had an idea of getting her hand and that she did not like to marry the petitioner. The respondent had deposed that she had realised the mistake after writing the letter and therefore, she decided not to post it to the destination. The learned Judge went on to hold that the sentence written in the letter exhibited her inner feeling towards the petitioner and therefore, she might have informed the husband, whom she had to marry against her wishes, that she was not interested in the marriage and therefore, she has caused mental agony by writing this letter. We are totally unable to accept the reasoning of the learned Judge. In our view, this undated and unposted letter cannot be treated as having been addressed to anybody, much less to reveal the feelings of the respondent this cannot give rise to a reasonable presumption that she has got a hatred against her husband. The learned Judge failed to see that many such proposals and arrangements would have come prior to one's marriage. They might have liked a person for one reason or the other, but that may not fructify the marriage. Simply because the appellant liked a person other than her husband, that does

not mean that she developed a hatred towards her husband, whom she had married

later on. The unearthing of this letter after ten years and putting that against the appellant as if it had caused a mental agony to the respondent is clearly illegal.

19. A Division Bench of the Calcutta High Court in SHRI PRANAB BISWAS VS. SMT. MRINMAYEE DASSI & ANOTHER (A.I.R. 1976 CALCUTTA 156), held that in order to determine that a love letter written to her lover would amount to mental cruelty, that must be evidenced to show that there was reasonable apprehension of harm or injury in the mind of the respondent/husband.

20. The finding of the learned judge that by writing the letter, the wife had caused mental agony to the husband cannot be sustained for the reasons stated above. The learned Judge further erred in holding that it cannot be held that the petitioner is entitled to get divorce merely because of the threat of the wife to commit suicide. It should be taken into account as one of the points in favour of the petitioner. This is in the absence of establishment of the fact that the wife threatened to commit suicide. From the evidence, we find that the allegation is unfounded and it has no evidence to support the case of threat. The wife has stated at more than one place that she is always ready and willing to live with her husband and that it was only her husband who is not willing to permit her to lead the marital life.

21. For all these reasons, there are absolutely no grounds to sustain the contention of cruelty under Section 13(1) of the Hindu Marriage Act. The findings of the learned Judge are therefore liable to be set aside and accordingly set aside. The appeal is allowed. No costs. Consequently, the connected C.M.Ps. are closed.

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Assistant Registrar

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Sub Assistant Registrar (C.S.)

To
The Presiding Officer,
Family Court,
Madurai.

P. SHANMUGAM, J.
and
P. THANGAVEL, J.

Pre-delivery Judgment in
C.M.A. No.37 of 2001

Delivered on